

OCT 19 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMARJIT SINGH AHIR,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74367

Agency No. A72-670-049

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted October 11, 2005^{**}

Before: HALL, T.G. NELSON and TALLMAN, Circuit Judges.

Amarjit Singh Ahir, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") denial of his motion to reopen deportation

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

proceedings conducted in absentia. We deny in part and dismiss in part the petition for review.

We do not review the BIA's determination that Ahir's motion to reopen was not timely filed, because Ahir concedes in his opening brief that he filed his motion to reopen late. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996).

We do not consider Ahir's contention that he presented new and previously unavailable evidence, because we lack jurisdiction to review the BIA's decision not to invoke its sua sponte authority to reopen regardless of timeliness. *See Ekimian v. INS*, 303 F.3d 1153, 1157-58 (9th Cir. 2002).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.